

KENAI PENINSULA BOROUGH REAL PROPERTY LEASE

This LEASE (hereinafter "LEASE"), for good and valuable consideration, and pursuant to Ordinance 2003-06, enacted April 1, 2003, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and AARDVARK PUMPING, INC., whose address is P.O. Box 2289, Soldotna, Alaska 99669 (hereinafter called "LESSEE").

I. PURPOSE OF LEASE

This LEASE grants LESSEE use of the real property (hereinafter called "Property") described in Section II below for the purpose of installing and operating a septic waste disposal system on the Property pursuant to the terms and conditions of an Alaska Department of Environmental Conservation (ADEC) permit, as further described in Section III. Development Plan. The LESSEE is not authorized to use the Property for any purpose not authorized by an ADEC permit, unless authorized by the KPB in writing. An ADEC permit has not been issued at time of execution of this lease, however, LESSEE will comply with the final permit terms and conditions and any subsequent amendments or modifications as a condition of this LEASE.

II. DESCRIPTION OF PROPERTY AFFECTED

The following parcel of real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, is described as:

N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14, T4N, R11W, S.M., Alaska, in the Kenai Recording District, Third Judicial District, State of Alaska, containing 30 acres more or less.

III. TERMS AND CONDITIONS SPECIFIC TO LEASE BETWEEN KPB AND AARDVARK PUMPING, INC.

1. Lease Term. This LEASE is for a term of 30 years commencing August 1, 2005 and terminating July 31, 2034.

2. Lease Rental.

- a. Pursuant to KPB Ordinance 2003-06 the annual lease rental for the first year of this LEASE is Six Thousand Dollars (\$6,000.00), plus any applicable sales taxes as may otherwise be required by law, which shall be payable in monthly installments due on the first day of each month for the duration of this LEASE. The monthly rental for the first year of this LEASE is Five Hundred Dollars (\$500.00), plus any applicable sales taxes as may otherwise be required by law. Rent will be prorated for any partial year.
- b. Rent shall be increased each year by three percent (3%) over the previous year's rent as shown on Attachment A attached hereto and made a part hereof.

3. Restrictive Covenant. This LEASE is subject to a restrictive covenant pursuant to KPB Code, Section 17.10.130(D), which requires that all lands or interests in land be conveyed by an instrument containing restrictions that restrict the use of the land to that classification and prohibit the use of the land for any other purpose. The real property described in this conveyance instrument is classified "Government." Government means lands that may be or are required for use by a federal, state or local governmental entity. Such uses include existing and future school sites; sites for service area facilities; or, any governmental use determined to be beneficial to the public. The use of the land for any other purpose, incompatible with governmental use, is prohibited. Any revisions to the development plan or lease terms must be approved by the borough in writing. The property shall be used for the purposes within the scope of the application, the terms and conditions of the lease and in conformity with the lessee's development plan. Use or development for other than allowed purposes shall subject the lease to termination.

4. Development Plan. The LESSEE shall install a septic waste disposal system and operate the same pursuant to the Development Plan; Attachment B attached hereto and made a part hereof.

- a. Commencement of Activities. The Development Plan shall be implemented according to its schedule; however, a septic waste disposal system shall not be operated on the Property until:
 1. Issuance of the required ADEC permit. An ADEC permit has not been issued at the time this LEASE was executed, however, LESSEE shall comply with terms and conditions of final ADEC permit and any subsequent amendments or modifications as a condition of this

LEASE. When issued, ADEC Permit shall be made a part of this LEASE by reference and attached hereto as Attachment C.

2. Insurance acceptable to the KPB is established.
- b. Survey. LESSEE, at its sole cost, shall survey and have a subdivision plat recorded of the Property prior to a septic waste disposal system being operated. The KPB shall issue survey instructions for the Property within 30 days after receiving written request by LESSEE.
5. Surety Bonding. A bond in the amount of \$10,000 is required as a condition of this lease. The bond warrants LESSEE will faithfully implement the Development Plan. The bond may be released upon issuance of the required ADEC permit.
6. Access. The property shall be accessed as depicted on the Development Plan. LESSEE is responsible for providing KPB with a centerline description of the access road. Within 30 days after receiving written request by LESSEE and centerline description KPB shall grant LESSEE an appurtenant easement 60 feet in width, 30 feet on each side of the centerline.
7. Site Closure. Notwithstanding KPB Code Section 17.10.240 provisions, prior to termination of LEASE the KPB reserves the right, at KPB's sole option, to require LESSEE to restore the property to a natural condition, free of contamination or to leave the site in a condition suitable for use by another.
 - A. Restoration to a Natural Condition
 1. Removal of Improvements. LESSEE shall remove all improvements including surface structures, pads, tanks and foundations. Underground piping and plumbing does not need to be removed. Access road will be ditched, gated or made impassable as agreed between KPB and LESSEE. LESSEE will not be required to remove roadbed material.
 2. Testing. At LESSEE'S sole expense, Property shall be sampled and analyzed in accordance with ADEC regulations at the time of closure to insure that there is no residual contamination creating a liability for the KPB.
 3. Remediation. At LESSEE'S sole expense, clean up and remediation of environmental contamination shall be accomplished to Alaska Department of Environmental Conservation standards prior to termination of lease.

4. Reclamation. Site shall be reclaimed by adding organic material to disturbed areas and then planted with local plant species.
5. Post-closure Inspection. KPB and LESSEE will jointly inspect Property to confirm that Property is left in a condition acceptable to KPB.

B. Restoration to a Condition Suitable for Use by Another:

1. Pre-closure Inspection. KPB and LESSEE will jointly inspect Property for the purpose of KPB determining the condition that the Property will be left in prior to termination of LEASE. KPB and LESSEE shall agree in writing the condition that Property will be left in prior to termination of LEASE. KPB, at its sole discretion, may require LESSEE to take any or all of the actions listed in B. 2-6 below.
2. Removal of Improvements. LESSEE shall remove such improvements as directed by the KPB, which may include surface structures, pads, tanks and foundations. Underground piping and plumbing does not need to be removed. Access road may be ditched, gated or made impassable as agreed between KPB and LESSEE. LESSEE will not be required to remove roadbed material.
4. Testing. At LESSEE'S sole expense, Property shall be sampled and analyzed in accordance with ADEC regulations at the time of closure to insure that there is no residual contamination creating a liability for the KPB.
5. Remediation. At LESSEE'S sole expense, clean up and remediation of environmental contamination shall be accomplished to Alaska Department of Environmental Conservation standards prior to termination of lease.
6. Post-closure Inspection. KPB and LESSEE will jointly inspect the Property to confirm that the Property is left in a condition acceptable to KPB.

IV. TERMS AND CONDITIONS CONTAINED IN KPB CODE SECTION 17.10.240

1. Assignments. LESSEE may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all

interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions of this agreement and laws and regulations applicable thereto.

2. Termination. Upon termination of this LEASE, LESSEE covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of paragraph 11 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this LEASE. Subject to the following, in the event of LESSEE's default in the performance or observance of any of the LEASE terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the LEASE is in default.

In the event LESSEE breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without further notice to LESSEE.

3. Cancellation. At any time that this LEASE is in good standing it may be canceled in whole or in part upon mutual written agreement by the LESSEE and either the KPB Mayor or Planning Director. This LEASE is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
4. Conditional Contract. This LEASE is issued on a conditional basis and shall be canceled in whole or in part in the event the borough is denied title to said lands. Payment made by the lessee on the land to which title is denied the borough shall be refunded in whole or in part to the agreement holder of record and any properly recorded lienholder, if any, jointly. However, the borough shall in no way be liable for any damage that may be done to the land by the lessee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under agreement, the conditional agreement shall then have the same standing, force and effect as non-conditional agreements issued under any regulations of KPB 17.10.
5. Entry or Re-Entry. In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary

proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefore. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

6. Fire Protection. LESSEE shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
7. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, LESSEE shall IMMEDIATELY report such release to the KPB Planning Director and to any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261.3, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this LEASE.

8. Full and Final Agreement. This LEASE constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This LEASE may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. LESSEE avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.
9. Notice. Any notice or demand, which under the terms of this LEASE must be given or made by the parties hereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown in this section. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR
KENAI PENINSULA BOROUGH
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

LESSEE
AARDVARK PUMPING, INC.
ATTN: JERRY K. HOLLAND
P.O. Box 2289
Soldotna, AK 99669

10. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this agreement.
11. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the LESSEE or placed on the land during its tenure with or without its permission and remaining upon the premises after the termination of the LEASE shall entitle KPB to charge a reasonable rent therefor.
12. Resale. In the event that this LEASE should be terminated, canceled, forfeited or abandoned, KPB may offer said lands for sale, lease or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations. If said land is not immediately disposed of, then said land shall return to the Land Bank.
13. Responsibility of Location. It shall be the responsibility of the LESSEE to properly locate its self and its improvements on the leased lands.
14. Liens and Mortgages. LESSEE shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease, except in

connection with financing transactions as discussed below. In the event that any prohibited lien is placed against the property, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys fees.

For the purpose of interim or permanent financing of improvements to be placed upon the leased property, and for no other purpose, LESSEE, after giving written notice thereof to KPB, may encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the leased premises and in and to this LEASE, provided such encumbrance pertains only to such leasehold interest and does not pertain to or create any interest in KPB's title to or interest in the leased property. Any such encumbrance shall be entirely subordinate to KPB's rights and interest in the leased property.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

15. Easements and Rights-of-Way. This LEASE is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary. All trails or roads existing at the time this LEASE is executed shall be considered an easement for public use.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that LESSEE shall receive no damages for such grant.

As established by AS 38.05, KPB lands sold or leased may be subject to a minimum fifty-foot public access easement landward from the ordinary high water mark or mean high water mark.

16. Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands

17. Subleasing. No LESSEE may sublease lands or any part thereof without written permission of the mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.
18. Violation. Violation of any of the terms of this LEASE may expose LESSEE to appropriate legal action including forfeiture of lease/purchase interest, termination, or cancellation of its interest in accordance with state law.
19. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by LESSEE, or of any default on the part of the LESSEE in observance or performance of any of the conditions or covenants of this LEASE, shall not be deemed to be a waiver of any provision of the LEASE. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.

V. GENERAL TERMS AND CONDITIONS

1. Waste. LESSEE shall not commit waste or injury upon the lands leased herein.
2. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the land developed or used for pedestrian traffic.
3. Compliance With Laws. The LESSEE agrees to comply with all applicable federal, state, borough and local laws and regulations.
4. Inspections. LESSEE shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with or without advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.

5. Indemnification and Liability Insurance.

- a. Indemnification and Hold Harmless. The LESSEE shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from LESSEE'S performance or failure to perform in accord with the terms of this lease in any way whatsoever. The LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE'S officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.
- b. Liability Insurance. LESSEE shall purchase at its own expense and maintain in force at all times during the term of this Lease Comprehensive General Liability Insurance, which shall include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000 per occurrence. The policy purchased shall name LESSEE as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage.
- c. Contractor's Pollution Liability Insurance. LESSEE shall purchase at its own expense and maintain in force at all times during the term of this lease Contractor's Pollution Liability Insurance, which shall include damages caused by the release of pollutants with respect to the property and the activities conducted by the LESSEE in which the coverage shall not be less than \$1,000,000.00 per occurrence. The policy purchased shall name LESSEE as the insured and KPB as an additional insured, and shall also require the insurer to provide KPB with thirty (30) days or more advance written notice of any pending cancellation or change in coverage. Any insured v. insured exclusion included within the policy must be restricted to the named insured only.
- d. Proof of Insurance. At the time of executing this LEASE, and at the time of each renewal of insurance, LESSEE shall deliver to the KPB Planning Director certificates of insurance meeting the above criteria.

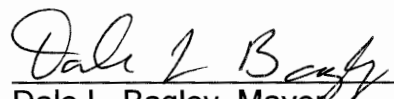
6. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
7. Jurisdiction. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed at Kenai, Alaska and shall be governed by Alaska law.
8. Savings Clause. Should any provision of this LEASE fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.
9. Binding Effect. It is agreed that all covenants, terms and conditions of this LEASE shall be binding upon the successors, heirs and assigns of the original parties hereto.
10. Authorization to Sign. LESSEE warrants that the persons executing this LEASE are authorized to do so on behalf of AARDVARK PUMPING, INC.

AARDVARK PUMPING, INC.

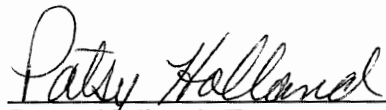
KENAI PENINSULA BOROUGH


Jerry K. Holland, President

Dated: 8/1/05


Dale L. Bagley, Mayor

Dated: 8/15/05

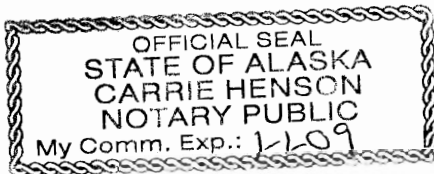

Patsy Holland, Treasurer

Dated: 8/1/05

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 1st day of August 2005, by Patsy Holland, Treasurer, Aardvark Pumping, Inc., for and on behalf of the corporation.



Carrie Henson
Notary Public in and for Alaska
My commission expires: 1-1-09

ATTACHMENT A
Aardvark Pumping, Inc.
Lease Rental Rate

RENT SCHEDULE PER YEAR AT 3% ANNUAL INCREASES

	YEAR	ANNUAL RENT	MONTHLY RENT
1	2005	\$6,000	\$500
2	2006	\$6,180	\$515
3	2007	\$6,365	\$530
4	2008	\$6,556	\$546
5	2009	\$6,753	\$563
6	2010	\$6,956	\$580
7	2011	\$7,164	\$597
8	2012	\$7,379	\$615
9	2013	\$7,601	\$633
10	2014	\$7,829	\$652
11	2015	\$8,063	\$672
12	2016	\$8,305	\$692
13	2017	\$8,555	\$713
14	2018	\$8,811	\$734
15	2019	\$9,076	\$756
16	2020	\$9,348	\$779
17	2021	\$9,628	\$802
18	2022	\$9,917	\$826
19	2023	\$10,215	\$851
20	2024	\$10,521	\$877
21	2025	\$10,837	\$903
22	2026	\$11,162	\$930
23	2027	\$11,497	\$958
24	2028	\$11,842	\$987
25	2029	\$12,197	\$1,016
26	2030	\$12,563	\$1,047
27	2031	\$12,940	\$1,078
28	2032	\$13,328	\$1,111
29	2033	\$13,728	\$1,144
30	2034	<u>\$14,139</u>	\$1,178
		\$285,452	